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SUPREME COURT
STATE OF WASHINGTON

No. 81556-9

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SUPREME COURT
OF THE STATE OF WASHINGTON

BY RONALD R. CARPENTER

CLERK

HON. MICHAEL F. MORGAN, Individually and in his Official Capacity
as Presiding Judge of the Municipal Court of Federal Way,
Petitioner/Appellant/Cross-Respondent,

v.

CITY OF FEDERAL WAY, a code municipality; and the CITY
ATTORNEY FOR FEDERAL WAY,
Respondents/Cross-Appellants

and

TACOMA NEWS, INC. d/b/a THE NEWS TRIBUNE,
Intervenor/Respondent

**CITY OF FEDERAL WAY'S SHORT RESPONSE TO *AMICUS*
COALITION FOR OPEN GOVERNMENT'S BRIEF**

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1 INTRODUCTION

The City of Federal Way presents this short response to the brief of *amicus* Washington Coalition for Open Government.

2. DISCUSSION

The *amicus* brief by the Washington Coalition for Open Government (WCOG) generally supports the City of Federal Way's position. The City responds only to address certain inaccurate statements of the law by WCOG.

Specifically, on page 13 of the brief, WCOG states, "*Factual matters contained within otherwise 'privileged' or 'exempt' documents are still subject to disclosure under the PRA.*" This is an inaccurate statement of the law made without any supporting citation.

On page 14 of its brief, however, it does appear that WCOG is relying on the dissent in *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 760, 174 P.3d 600 (2007) (C. Johnson, J., dissenting), in support of this assertion, which is expanded on, on page 14. The majority in *Soter* held the exact opposite from what WCOG asserts. This Court held that the "factual information" gathered by private investigators was protected work product information. *Soter*, 162 Wn.2d at 748. As WCOG's reliance on the *Soter* dissent would imply, this Court rejected the argument WCOG now makes that factual information in documents exempt from disclosure

as work product or attorney-client communications had to be disclosed. The same would apply here. But the Court is not faced with that issue in this case.

Even were the Court to conclude the Stephson report was work product, there is no legal basis for requiring disclosure of its factual conclusions. But as the facts show, the report was prepared in the City's ordinary course of business, pursuant to its anti-harassment policy and is not work product.

3. CONCLUSION

The City of Federal Way properly administered the Public Records Act in providing for disclosure of its administrative report regarding complaints of a hostile work environment. The Court should affirm the trial court, as urged by the City, the Tacoma News Tribune and WCOG.

RESPECTFULLY SUBMITTED this 28th day of January, 2009.

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